

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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| UNITED STATES OF AMERICA |) | CR No.: 0:09-1021-JFA |
| |) | |
| v. |) | ORDER |
| |) | |
| DAVID LEE CRADLE, JR. |) | |
| |) | |
| _____ |) | |

On September 10, 2012, the defendant filed a *pro se* motion to reduce his sentence under 18 U.S.C. § 3582, the Fair Sentencing Act of 2010, and the Supreme Court's holding in *Dorsey v. United States*, ___ U.S. ___, 132 S.Ct. 2321 (June 21, 2012). At the court's request, the government responded to the motion suggesting to the court that a reduction in the statutory mandatory minimum sentence cannot be revisited in § 3582 proceedings under Amendment 750, but instead relief should be sought under 28 U.S.C. § 2255.

The court then issued an order advising the defendant that it was considering recharacterizing his § 3582 motion as one under § 2255. Pursuant to *Castro v. United States*, 124 S.Ct. 786 (2003), the court advised the defendant of the consequences for such recharacterization, and provided him an opportunity to withdraw the motion, amend the motion, or agree to its recharacterization. The court then appointed the Federal Public Defender to represent the defendant for the purposes of filing a § 2255 motion should the defendant so desire.

On March 7, 2013, the defendant filed a *pro se* motion to vacate, correct, or set aside his sentence under § 2255 and supporting memoranda was subsequently filed. Shortly

thereafter, the defendant filed a letter with the court indicating that he was not satisfied with appointed counsel. The court issued an order on March 20, 2013, wherein it withdrew the Federal Public Defender's Office appointment so that the defendant could proceed *pro se*. The court also directed the government to respond to the newly filed § 2255 motion.

The government filed a motion for partial summary judgment on April 8, 2013, and the defendant was advised by this court under *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1974), of his right to respond to the motion. The defendant filed a motion to extend time (ECF No. 404) to respond to the *Roseboro* order. That motion is now moot, as the defendant has already responded to the government's opposition to the § 2255 motion.

Presently before the court is the defendant's motion for appointment of counsel (ECF No. 419) to assist him in these § 2255 proceedings. Although the court has previously appointed the Federal Public Defender's Office and the defendant later declined the services of its attorney, it appears to be in the best interest of the parties for this court to grant the new motion to appoint counsel. It also appears that the government agrees, in part, that the defendant should be resentenced in light of the Fair Sentencing Act. The government, however, opposes the defendant's remaining claims in the § 2255 petition.

For good cause shown, the court will grant the defendant's motion for appointment of counsel. Pursuant to the Criminal Justice Act, Title 18, United States Code, Section 3006A, and the Plan of this District approved thereunder on April 21, 1971, by the Judicial Council of the Fourth Circuit, the Federal Public Defender is hereby appointed to represent the above-named defendant for the limited purpose of assisting the defendant with his claim regarding

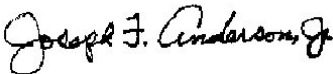
resentencing under the Fair Sentencing Act and also his claim for ineffective assistance of counsel. The defendant is advised that no further amendments to the § 2255 motion will be permitted.

The court will conduct a hearing on the § 2255 motion on Thursday, October 17, 2013 at 10:00 a.m. in Courtroom IV of the Matthew J. Perry, Jr. United States Courthouse, 901 Richland Street, Columbia, South Carolina, 29201.

The United States Marshal and the Federal Bureau of Prisons shall transport the defendant to Columbia, South Carolina for the hearing. The defendant is directed to bring to this hearing any and all supporting documentation he has in his possession regarding his case. The Clerk shall serve a copy of this order upon attorney Robert L. Hallman, defendants' former counsel, so that he may attend the hearing to provide testimony on the remaining issues presented in the § 2255 motion.

IT IS SO ORDERED.

August 6, 2013
Columbia, South Carolina


Joseph F. Anderson, Jr.
United States District Judge